

April,
1715.

CHAP. XXVI.

An ACT for the speedy trial of criminals, and ascertaining their punishment in the county courts when prosecuted there, and for payment of fees due from criminal persons.

A Supplementary act, May 1766, ch. 6.

Preamble.

WHEREAS many acts of assembly have been heretofore made against thieving and stealing, which at this present are not sufficient to prevent the committing those crimes, or to punish them when committed ;

Justices of
the county
courts, of
what crimes
they may
hold plea.

II. BE IT THEREFORE ENACTED, *by the King's most excellent majesty, by and with the advice and consent of his majesty's Governor, Council and Assembly of this province, and the authority of the same,* That it shall and may be lawful to and for the several justices of the county courts of this province to hold plea of, adjudge, and in lawful manner determine, all thieving and stealing of any goods or chattels whatsoever, not being above the value of one thousand pounds of tobacco (robbery, burglary, and house-breaking excepted,) (a) and every person or persons legally convicted of any such thieving and stealing (except before excepted,) by testimony of one sufficient evidence, not being the party grieved, before any such county court as aforesaid, shall and may cause to be punished, by paying fourfold of the value of the goods so thieved or stolen as aforesaid, and the stolen goods returned to the party or parties grieved thereby, and by putting in the pillory, and whipping so many stripes as the court before whom such matter is tried, shall adjudge, not exceeding forty ; which court shall always adjudge the value of the goods so thieved and stolen as aforesaid ; and if any such person, so convicted, have not sufficient goods and chattels, or be a servant, whereby he is incapable to have goods and chattels to satisfy and pay the said fourfold, in every such case, such person or persons shall receive the corporal punishment as aforesaid, and satisfy the fourfold, and fees of conviction, by servitude.

Time of service, when
to commence.

III. AND BE IT HEREBY ENACTED AND DECLARED, *by the authority, advice and consent aforesaid,* That the time of service of a free person convict as aforesaid, not having goods and chattels as aforesaid, shall commence from the time of his conviction as aforesaid ; and the time of service of a servant, convict as aforesaid, shall commence at the expiration of such time of servitude, to which, at the time of his conviction, he stood bound, which time of servitude, for satisfaction for the

(a) By 1785, ch. 87, section 7, the justices of the county courts are empowered, (unless in cases particularly directed by law to be tried in the general court) to try all persons who have committed any manner of offence, although it may subject such person to the pains of death.

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stolen goods, and fees accrued as aforesaid, shall be adjudged by such county court, either to the party grieved, or any other person the court shall order such convict to, that will then and there pay, or secure to be paid, the fourfold and costs aforesaid, at the discretion of the court; and if any person or persons shall receive or take part of such stolen goods, or assist the person so stealing as aforesaid to make away or conceal them, being legally convicted as aforesaid, shall suffer the same corporal pains with the party stealing as aforesaid, any law, statute, usage or custom to the contrary notwithstanding.

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IV. AND, If any person or persons have been once convicted of any such thieving and stealing, (except before excepted,) and shall after be again presented for thieving and stealing of any goods or chattels, laid to be above the value of twelve-pence, it shall not be tried and determined by any county court, but the party presented, upon such presentment, shall be proceeded against in the provincial court as a felon for simple felony, but shall not be punished by death, but only paying the fourfold, branding with a hot iron, or such other corporal punishment as the court shall adjudge, saving life; and such presentment shall be, by the clerk of every such county court, immediately sent to the then next provincial court, together with a transcript of his former conviction, if such conviction was in the same court where the presentment aforesaid shall be, or otherwise, made known to the attorney-general in what other court such former conviction was, if to him known, under the penalty of five hundred pounds of tobacco to our sovereign lord the king, his heirs and successors, for the support of government; and the parties witnesses against such felons, if in court at the time of such presentment, shall be bound over to give evidence as aforesaid, or otherwise, if not in court, an account of their names and places of dwelling to be sent to the attorney-general, to be summoned against the then next provincial court, in order to such trial; and the party presented, if in court, to be bound over also, by due course of law, to answer such presentment, or, if not in court, proceeded against by due course of law as aforesaid.

Persons again prosecuted must be tried in the provincial court, if the presentment charges them with stealing above the value of 12 pence.

V. AND BE IT FURTHER ENACTED, *by the authority, advice and consent aforesaid*, That any person or persons whatsoever that shall kill any unmarked swine above three months old, if not upon his or their own land, or not in company with his or their own stock, shall and is hereby adjudged an hog stealer, and shall be liable to restore fourfold, and suffer such corporal pains as against the first offence in this act mentioned.

Penalty for killing unmarked swine.

VI. AND, to prevent any person or persons concealing or disfiguring the mark of any swine killed as aforesaid, BE IT FURTHER ENACTED, *by the authority advice and consent aforesaid*, That if any person or persons killing any such unmarked swine in the woods, or elsewhere, and shall wilfully disfigure the mark, or cut off the ears of such swine, so as to con-

For disfiguring their mark, &c.

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And on
persons con-
victed for
hunting, &c.

Criminals to
pay their
own fees, by
servitude, if
not other-
wise capa-
ble.

Proviso.

Officers fees,
how to be
paid.

ceal the true and real mark, or whether it were marked or not, shall be deemed and adjudged a hog stealer within the purview of this act, and shall suffer accordingly.

VII. AND, to prevent the abusing, hurting or worrying of any stock of hogs, cattle or horses, with dogs, or otherwise, **BE IT ENACTED**, That if any person or persons whatsoever, that have been convicted of any of the crimes aforesaid, or other crimes, or that shall be of evil fame, or a vagrant, or dissolute liver, that shall shoot, kill or hunt, or be seen to carry a gun, upon any person's land, whereon there shall be a seated plantation, without the owner's leave, having been once before warned, shall forfeit and pay one thousand pounds of tobacco, one half to our sovereign lord the king, his heirs and successors, the other half to the party grieved, or those who shall sue for the same, to be recovered in any county court of this province by action of debt, bill, plaint or information, wherein no essoin, protection or wager of law to be allowed.

VIII. AND BE IT FURTHER ENACTED, *by the authority, advice and consent aforesaid*, That from henceforth no sheriff, gaoler, clerk, crier, or other officer, shall charge either their own county, to which they belong, or the public, with any fees for any criminal committed to the charge of the said sheriff or gaoler, having sufficient estate in this province wherewith to pay the same, or being capable to pay the same by servitude, but that such criminals, being discharged by order and due course of law, shall pay their own fees to the sheriff, gaoler, clerk and crier, and other officers, being such as they may demand according to law, either out of his estate, or by servitude, or otherwise.

Vide 1781, ch 11.

IX. PROVIDED ALWAYS, That this act shall not extend to malefactors that are executed, or to such other persons who are banished, having no estate in this province, or to servants criminals, for whom the county shall pay such fees as are due by the acts of assembly to the sheriff, gaoler, clerk, crier, or other officers of such court where such criminal shall be convicted.

X. AND BE IT FURTHER ENACTED, *by the authority aforesaid*, That all officers' fees due by law from (a) criminal servants, shall be paid by the county where the facts shall be committed; and that all and every such criminal servants for

(a) By the act of 1727, ch. 2, all fees due on the prosecution of imported servants, were to be paid by the masters, &c. of such servants, and not by the public or county; and the owners (unless in case of conviction and execution for capital offences,) to have recompence for such fees, by such servitude of the servants (not exceeding three years) as should be thought reasonable by the county court, &c. By May, 1766, ch. 6, the legal fees on the prosecution of any negro, or other slave, in any county court, (whether convicted or acquitted,) shall be paid by and assessed in the levy of the respective counties where prosecuted.

whom the county shall pay the fees due by law to such officers as aforesaid, shall, after the end and expiration of their time of servitude to their master or mistress, satisfy and pay unto the commissioners of the county who paid such fees for them to the sheriff, and other officers as aforesaid, for the use of the county, such sums as they have paid as aforesaid: and the several commissioners of the several counties shall, and are hereby empowered to make inquisition after all such servants, criminals, for whom the county hath defrayed the said fees to the sheriff, and other officers as aforesaid; and they, the said commissioners, according to their best discretion, shall cause to be entered rules for the servants to make such reasonable satisfaction to the county as they shall think fit, and in such manner as they shall find convenient.

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XI. AND, for the better security of the county which shall pay such fees for such criminal servants as aforesaid, **BE IT ENACTED**, *by the authority aforesaid*, That the master, mistress or dame of all such servants, be and are hereby enjoined and required, at the expiration of the time of such servant's servitude to such master, or mistress or dame, to render and deliver up to the sheriff of the county, for the use of the county aforesaid, such servants criminals as aforesaid, under the penalties to such master, mistress or dame, refusing or neglecting to deliver up such servants as aforesaid, of making satisfaction to the county for all such fees as by the county aforesaid have been paid for such criminal as aforesaid; and such sheriff to whom such criminal servant shall be delivered as aforesaid, is hereby required to receive and secure such servants criminals as aforesaid, so that he be and appear at the then next county court to be held for the said county, to be disposed of as the said court shall consider.

Masters, &c.
to deliver up
servants,
criminals under
penalty
of paying the
fees, paid
for the
criminal by
the county.

Vide list of acts respecting crimes and punishments, 1692, ch. 16.

CHAP. XXVII.

An ACT for the punishing the offences of adultery and fornication.

Other acts: 1749, ch. 12.—Nov. 1781, ch. 13.—1785, ch. 47.—1796, ch. 34.

BE IT ENACTED, *by the King's most excellent majesty, by and with the advice and consent of his majesty's Governor, Council and Assembly of this province, and the authority of the same*, That after the end of this session of assembly, whosoever shall, directly or indirectly, entertain, provide for, or cause to be entertained or provided for, any lewd woman or women, or that shall frequent her or their company, after that admonition to him or them be given by the minister, or the vestry, or the churchwarden or churchwardens of the parish where such person or persons shall inhabit, shall be adjudged

Certain persons to be adjudged fornicators, &c.